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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,141	07/30/2003	John J. Giobbi	47079-0107D2	9474
70243 7590 04/14/2008 NIXON PEABODY LLP 161 N CLARK ST. 48TH FLOOR CHICAGO, IL 60601-3213				
EXAMINER				
YOO, JASSON H				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/630,141

Applicant(s)

GIOBBI, JOHN J.

Examiner

JASSON H. YOO

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 101-125 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 101-125 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 3/21/08

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 105 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant specification fails to teach operating the gaming machine in an attract mode prior to detecting the presence of a passerby. Applicant's specifically teaches in attract mode, the predetermined distance and period of time may be set to enable a wireless transmission link (paragraph 14).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 105 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 105 recites the limitations of "operating the gaming machine in an attract mode prior to detecting the presence of a passerby. However, Applicant specification disclose the attract mode is the first mode, which requires

detecting the presence of a passerby (paragraph 14). Thus claim 105 and the independent claim 102 is inconsistent with Applicant's specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 102-125 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims incorporate the limitations of detecting the presence of the passerby within a predetermined distance of the gaming machine and/or for at least predetermined period of time. It is not clear if a predetermined distance and predetermined period of time is required to detect the presence of the passerby, or one of a predetermined distance or a predetermined period of time is required to detect the presence of the passerby.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 101-125 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hedrick et al. (US 6,908,387) in view of Rantze (US 6,536,658).

101, 102, 111-112, 116, 120-122. Hedrick discloses a method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit carried by an individual (cols. 5:56-6:6, 10:45-56, 17:44-18:2). The portable data unit transfers player tracking information to the gaming machine. Thus the portable data unit must store player information in order to transfer the player tracking information to the gaming machine (col. 17:44-51.). The player tracking information is used during a player tracking session to associate player's game play with the player's account (col. 17:34-18:5). The gaming machine detects the portable data unit within a predetermined distance (cols. 10:57-11:25). Hedrick also discloses the gaming machine operates in an attract mode upon sensing a player in proximity of the gaming machine (col. 12:23-30). However, Hedrick fails to teach the attract mode occurs in response to detecting a portable data unit carried by a user within a first predetermined distance or time, and a play mode occurs in response to detecting a portable data unit carried by a user within a second predetermined distance or time, wherein the first distance or time is different than the second predetermined distance or time. Nevertheless, the method of operating a device in different modes is well known in the art. In an analogous art to automatically detecting users to operate a device, Rantze discloses a method of changing operation modes depending on the actual distance of a user and movement of the user (abstract, cols. 2-4, 11:38-53). More specifically, Rantze discloses a method of operating retail terminal such as a kiosk. When a person is at a predetermined distance, the kiosk would operate in an attract mode by playing a sound clip (col. 2:41-45). As the user

approaches the kiosk, the information on the screen changes (col. 2:46-48). Rantze's method of operating the kiosk at different modes based on different distances allows the apparatus to operate more effectively by accommodating the user. Therefore it would have been obvious to one of ordinary skilled in the art at the time invention was made to modify Hedrick's method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit and incorporate Rantze's method of operating a device differently based on the user's distance in order to operate the gaming device more effectively based on the user's location.

Hedrick in view of Rantze further discloses the following:

103, 114. Receiving a wager from the passer by (Hedrick, cols. 17:44-18:19).

104. Operating the gaming machine in a first mode includes inviting the passerby to play the gaming machine (attract mode as discussed above).

105. Operating the gaming machine in an attract mode prior to detecting the presence of a passerby (In one embodiment, Hedrick discloses an attract mode during the idle mode, col. 11:63-67.).

106, 123. Inviting the passerby, based on the identity of the passerby, to play the gaming machine (Hedrick, col. 12:23-30, 12-36-59, 17:36-18:19).

107, 117. Operating the gaming machine in a first mode includes inviting the passerby based on the identity of the passerby, to play the gaming machine (see rejection for claims 102 and 106 above).

108, 113. Encrypting data communicated across the wireless communication link into ciphered data (col. 15:34-38).

109, 115. Operating the gaming machine in a first mode includes attracting the passerby to interact with the gaming machine (As discussed above in claim 102, Hedrick discloses an attract mode. This attract mode may cause the player to interact with the gaming machine.).

110, 118, 124. Attracting the passerby includes the gaming machine conveying a message to the passerby (Hedrick discloses a message in lights or sound to convey the message that the gaming machine wants attention to the player, col. 12:27-30).

119, 125. Hedrick in view of Rantze discloses the method of method of operating a gaming terminal by establishing a wireless transmission link with a portable data unit but fails to specifically teach modifying the operating of the gaming machine according the play mode includes disregarding individuals with a portable data unit who pass by the gaming machine at greater than the second predetermined distance and/or for less than second predetermined period of time. Nevertheless, such limitations would have

been obvious to one of ordinary skilled in the art. Hedrick in view of Rantze discloses a method of operating a gaming terminal in which operations modes are changed according the distance of the user. The operations modes are changed because the gaming terminal performs one mode at a time. When the gaming terminal is in play mode, the gaming terminal is occupied by the player. Switching the mode while a player is in play mode with the gaming terminal will disrupt the player's game. Therefore it would have been obvious to one of ordinary skilled in the art at the time the invention was made to modify Hedrick in view of Rantze's method of method of operating a gaming terminal and disregard individuals with a portable data unit who pass by the gaming machine in order to not disrupt the game that's in play.

Response to Arguments

Applicant's arguments with respect to claims 101-125 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fridman (US 2002/0112026) discloses a method of altering an operation of a device based distance of user carrying a wireless device (see specifically paragraph 264).

Mattice (US 6,645,078) discloses a gaming device to perform an attract mode when a person is detected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASSON H. YOO whose telephone number is (571)272-5563. The examiner can normally be reached on 9:00am - 5:00am.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3714

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JHY
/XUAN M. THAI/
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